

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 24 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN ABARCA-SOTELO, a/k/a Juan
Vargas-Sotelo,

Defendant - Appellant.

No. 08-10006

D.C. No. CR-07-01074-NVW

MEMORANDUM *

Appeal from the United States District Court
for the District of Arizona
Neil V. Wake, District Judge, Presiding

Submitted July 14, 2008 **

Before: SCHROEDER, LEAVY and IKUTA, Circuit Judges.

This is a direct criminal appeal of appellant's sentence for violation of 8
U.S.C. § 1326(a), enhanced by 8 U.S.C. § 1326(b)(2).

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. See Fed. R. App. P. 34(a)(2).

rb/MOATT

We have reviewed the record and the opening brief and conclude that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). The United States Supreme Court's decision in *Almendarez-Torres v. United States*, 523 U.S. 224, 247 (1998), remains binding on this court until the Court overrules it. *See United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (noting that this court remains bound by the Supreme Court's holding in *Almendarez-Torres* that the district court may enhance a sentence on the basis of prior convictions, even if the fact of those convictions was not found by a jury beyond a reasonable doubt).

Accordingly, the government's unopposed motion for summary affirmance of the district court's judgment is granted.

AFFIRMED.